

SPECIAL CIVIL APPLICATION No 7467 of 1998

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

2. To be referred to the Reporter or not? no @@

5. Whether it is to be circulated to the Civil Judge?
no

COMMISSIONER OF POLICE

Ms.Siddhi Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India, detention order dated 3rd September 1998 (Annexure : A to the writ petition) passed by the Commissioner of Police, Ahmedabad City, under Section 3(2) of the Gujarat Prevention of Anti-social Activity Act (for short "PASA") is under challenge with prayer that the aforesaid impugned order be quashed and the petitioner be released from custody forthwith.

2. Brief facts giving rise to this petition are as under :

The detaining Authority, aforesaid, considered bootlegging activity of the petitioner which was indicated from five registered cases against the petitioner under the Bombay Prohibition Act. The detaining Authority also considered two statements of two witnesses, who requested that their names and addresses be kept secret due to fear of the petitioner. Upon considering aforesaid material the detaining Authority arrived at subjective satisfaction that the petitioner is a bootlegger and her activities are prejudicial for maintenance of public order. Accordingly the impugned order was passed. It is this order which is under challenge in this writ petition on various grounds.

3. Learned Counsel for the petitioner at the time of argument pressed only one point that the activities of the petitioner did not amount to the activities prejudicial for maintenance of public order, hence the detention order is illegal and invalid.

4. From the grounds of detention it appears that five cases under the Bombay Prohibition Act were registered against the petitioner. Learned A.G.P. has argued that the petitioner is habitual and is carrying on business in country made liquor and even after being enlarged on bail she continued her criminal activities, viz. bootlegging activities and the impugned order was passed while she was in custody and her activities were prejudicial for maintenance of public order. Hence the writ petition deserves to be rejected.

5. The petitioner is certainly a bootlegger within the meaning of Section 2(b) of the PASA inasmuch five cases were registered against her under the Bombay

Prohibition Act between May to August, 1998. The two confidential witnesses also made statements which had referred bootlegging activities of the petitioner. Thus the subjective satisfaction of the detaining Authority that the petitioner is a bootlegger does not suffer from any infirmity.

6. A bootlegger, however, cannot be preventively detained unless it is found that his or her activities were prejudicial for maintenance of public order or were likely to disturb maintenance of public order within the meaning of Section 3(4) of the PASA and Explanation to Sub.Section 4 of Section 3 of PASA.

7. In order to determine whether the activities of the petitioner were prejudicial for maintenance of public order or not, five registered cases under the Prohibition Act do not give any indication that on these five occasion when the premises of the petitioner were raided and different quantity of country-made liquor was found she raised any obstruction or resistance to the search or seizure and created any situation which was prejudicial for maintenance of public order or that she mis-behaved with the raiding party. Consequently these registered cases are insufficient for arriving at subjective satisfaction that the petitioner's activities in those cases were prejudicial for maintenance of public order.

8. The detaining Authority in Para : 9 of his Counter Affidavit has deposed that he has considered the distinction between public order and law and order. This distinction is imaginary because in the absence of material indicating disturbance of public order at the time when registered offences were committed by the petitioner it could hardly be said that these activities were prejudicial for maintenance of public order.

9. Then remains the statements of two confidential witnesses. First witness stated about the incident dated 5.8.1998 at 10.00 A.M. In brief, the incident is that at that time witness was passing on the road when the petitioner and her accomplice intercepted the witness on the suspicion that he was keeping watch over their activities and was a police informer. The witness was abused by the petitioner and beaten by her accomplice. When neighbouring people collected the accomplice of the witness took out knife and touched the same on the person of the witness and threatened him. The accomplice also rushed towards persons who gathered at the spot. The accomplice was having open knife with him at that time. He ran towards other persons with intention to beat them.

People ran away and atmosphere of fear prevailed in the area and traffic was disturbed. This incident can hardly be said to have created situation prejudicial for maintenance of public order. Public order is said to have been disturbed in a locality or in an area when even tempo of the life of the locality or the community or peace and tranquility in the area is disturbed. Nothing of the sort is indicated from the statement of this witness. At the most it was a case of disturbance of law and order for which the petitioner could be hauled up under ordinary criminal law and not that she could be preventively detained. Moreover this witness has not stated that the petitioner had beaten him. Considering the entire statement of this witness it is difficult to agree with the detaining authority that this incident created situation prejudicial for maintenance of public order.

10. The second witness narrated the incident dated 20.8.1998 which took place at 6.00 p.m. It was stated by the witness that the petitioner along with her two accomplices came to him and asked him to store the stock of liquor with him. The witness refused to store liquore stock on account of fear of the police, whereupon the petitioner became excited and the two accomplices of the petitioner caught hold of the witness. He was dragged and beaten. On the alarm of the witness neighbouring persons gathered and on the extortion of the petitioner the accomplices of the petitioner took out knife and threatened the witness and rushed towards persons who gathered at the spot. Again atmosphere of fear prevailed in the area and routin business of the people was disturbed. This incident also can hardly said to have created situation prejudicial for maintenance of public order.

11. There is no sufficient evidence on record on which the detaining Authority could have satisfactorily arrived at subjective satisfaction that the activities of the petitioner were prejudicial for maintenance of public order. Since the basic condition for passing detention order, viz. activities being prejudicial for maintenance of public order is lacking the detention order cannot be sustained and it has certainly been rendered invalid. As a result thereof the petition succeeds. The impugned order of detention dated 3.9.1998 (Annexure : A to the petition) is quashed. The petitioner shall be released from custody forthwith unless wanted in some other case.

sd/-

(D.C.Srivastava, J.)

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